(4)

Supreme Court, U.S.
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No. 00-1277

In The

Supreme Court of the United States

ILLINOIS STATE UNIVERSITY, *et al.*,

Petitioners,

v.

DR. IRIS I. VARNER, *et al.*,

Respondents,

and

UNITED STATES OF AMERICA,

Intervenor-Respondent.

On Petition For A Writ Of Certiorari To The United States Court Of Appeals For The Seventh Circuit

REPLY IN FURTHER SUPPORT OF PETITION FOR A WRIT OF CERTIORARI

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Dated: May 18, 2001

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TABLE OF CONTENTS

Page

I. INTRODUCTION 1

II. THIS COURT'S DECISION IN *GARRETT* DIRECTLY REFUTES RESPONDENTS' CLAIMS 3

A. The Legislative History Of The Equal Pay Act Is Entirely Devoid Of Evidence Of Gender Discrimination By The States 3

B. The FLSA Materials Cited By Respondents Cannot Support Abrogation 4

C. The Materials Cited By Respondents From Other Sources Cannot Support Abrogation 5

1. There Is No Precedent For Relying Upon Extraneous Materials To Support Abrogation 5

2. None Of The Materials Relied Upon By Respondents Even Purport To Address The Two Critical Issues Here 6

III. *GARRETT* REFUTES ANY SUGGESTION THAT EXISTING REMEDIES ARE IRRELEVANT 8

IV. *GARRETT* REFUTES ANY SUGGESTION THAT THE STANDARD OF SCRUTINY SOMEHOW OBVIATES THE NEED FOR THE ANALYSIS REQUIRED BY *KATZENBACH* AND *BOERNE* 8

V. CONCLUSION 10

TABLE OF AUTHORITIES

Page

CASES

Board of Trustees of the Univ. of Alabama v. Garrett, 121 S. Ct. 955 (2001) ..... *passim*

City of Boerne v. Flores, 521 U.S. 507 (1997) 8, 9

College Savings Bank v. Florida Prepaid, 527 U.S. 666 (1999) 6, 7, 8

Dellmuth v. Muth, 491 U.S. 223 (1989) 1, 6

Fallon v. State of Illinois, 882 F.2d 1206 (7th Cir. 1989) 9

Florida Prepaid v. College Savings Bank, 527 U.S. 627 (1999) 5

Kimel v. Florida Bd. of Regents, 528 U.S. 62 (2000)... 1, 5, 8

Seminole Tribe v. Florida, 517 U.S. 44 (1996) 6

State of South Carolina v. Katzenbach, 383 U.S. 301 (1966) 8, 9

United States v. Lopez, 514 U.S. 549 (1995) 6

Varner v. ISU, 226 F.3d 927 (7th Cir. 2000)....3, 4, 7, 9, 10

OTHER AUTHORITIES

H.R. Rep. No. 93-913 (1974), *reprinted in* 1974 U.S.C.C.A.N. 2811-62 4

Pub. L. No. 92-318, 86 Stat. 375..... 4

S. Rep. No. 93-690 (1974) 4

SENATE SUBCOMM. ON LABOR, 94TH CONG., 2D SESS., LEGISLATIVE HISTORY OF THE FAIR LABOR STANDARDS AMENDMENTS OF 1974 (Comm. Print 1976) 3

REPLY IN FURTHER SUPPORT OF PETITION FOR A WRIT OF CERTIORARI

Petitioners Illinois State University, *et al.* ("Petitioners" or "ISU") submit the following reply to the briefs filed by Dr. Iris I. Varner, *et al.* and the Solicitor General of the United States (collectively, "Respondents") in connection with Petitioners' pending petition for a writ of certiorari.

I. INTRODUCTION

This Court has frequently noted that "abrogation of sovereign immunity upsets the fundamental constitutional balance between the federal government and the States. . . . " *See, e.g., Dellmuth v. Muth*, 491 U.S. 223, 227 (1989). To justify such a drastic step here, Respondents present a hodgepodge of scattered "evidence" relating to alleged discrimination against women by a handful of States. This approach is similar to the approach taken by the claimants in *Garrett*. *See Board of Trustees of the Univ. of Alabama v. Garrett*, 121 S. Ct. 955 (2001). As in *Garrett*, however, the proffered "evidence" does not warrant abrogation.

First, much of this so-called "evidence" has nothing to do with employment, employment discrimination or the Equal Pay Act. Second, none of these materials were considered by Congress in connection with the extension of the Equal Pay Act to the States. Instead, this evidence is "cobble[d] together" by Respondents from a variety of unrelated sources. *See Kimel v. Florida Bd. of Regents*, 528 U.S. 62, 90 (2000). Third, Respondents' reliance on the testimony presented to Congress in connection with the 1972 amendments to the Fair Labor Standards Act ("FLSA") is disingenuous at best, since that testimony related not to the extension of the Equal Pay Act to the States but rather to the application of the Equal Pay Act to women holding professional positions. Indeed, Respondents have not identified any evidence that Congress even considered the Equal Pay Act when it extended the FLSA to the States, and there is simply no reason to believe that

the extension of the Equal Pay Act was anything more than the accidental legislative byproduct of the decision by Congress to make the States subject to the overtime and wage provisions of the FLSA.

This conclusion is further confirmed by the fact that Congress made extensive findings when it extended the FLSA to the States, but not a single one of those findings relates to either the Equal Pay Act or to gender discrimination by the States. As this Court recently noted, "had Congress truly understood [the evidence it had received] as reflecting a pattern of unconstitutional behavior by the States, one would expect some mention of that conclusion in the Act's legislative findings." *See Garrett*, 121 S. Ct. at 966. But as in *Garrett*, "[t]here is none," and as a result, there is no basis for abrogation. *See id.*

Even more fundamentally, there is no suggestion by anyone that Congress ever seriously considered the two critical questions that must be answered before abrogation would be warranted here. Those two questions are: (a) were existing state and federal remedies (*e.g.*, Title VII) so ineffective in combating gender discrimination that the imposition of extra-constitutional measures was a "congruent and proportional" response to a "widespread" and persistent pattern of discrimination; and (b) were existing state forums so inadequate that subjecting the States to suit in federal court was "genuinely necessary" to vindicate the constitutional rights of women. These two questions go to the heart of the abrogation inquiry, and to this day, they remain unanswered by both Respondents and Congress.

The foregoing would be more than ample grounds for granting the instant petition. Two recent events, however, make that all the more appropriate. On February 21, 2001, this Court decided *Garrett*, and in so doing, this Court held that Title I of the Americans with Disabilities Act constituted an improper attempt to abrogate the Eleventh Amendment immunity of the States. In light of the decision in

Garrett, the Seventh Circuit subsequently ordered supplemental briefing in a pending Equal Pay Act case, recognizing that *Garrett* has a direct bearing on the issues presented here. *See* App. at 7aa. Given then that the Seventh Circuit itself has recognized the impact of *Garrett* on its prior holdings, this matter should at least be returned to the court of appeals so that it can be re-examined in light of this Court's recent ruling.

II. THIS COURT'S DECISION IN *GARRETT* DIRECTLY REFUTES RESPONDENTS' CLAIMS

A. The Legislative History Of The Equal Pay Act Is Entirely Devoid Of Evidence Of Gender Discrimination By The States

In connection with the extension of the FLSA to the States (and by further extension the Equal Pay Act), Congress made substantial legislative findings. *See* SENATE SUBCOMM. ON LABOR, 94TH CONG., 2D SESS., LEGISLATIVE HISTORY OF THE FAIR LABOR STANDARDS AMENDMENTS OF 1974 (Comm. Print 1976) (hereinafter, "FLSA LEGISLATIVE HISTORY"). Congress made no findings, however, that the States were engaged in a pattern of employment discrimination against women or anyone else. *See id.*; *see also*, *Varner v. ISU*, 226 F.3d 927, 935 (7th Cir. 2000) (noting that "the legislative record of the Equal Pay Act itself is devoid of any explicit findings as to the problem of gender discrimination by the States"). Nor did Congress find that existing state and federal remedies (*e.g.*, Title VII) were insufficient to protect State employees from gender discrimination. *See* FLSA LEGISLATIVE HISTORY. Nor did Congress find that state forums were not providing aggrieved women a full and fair opportunity to present their claims. *See id.* In short, Congress made no finding that could remotely suggest that the Equal Pay Act was needed to enforce the Constitution or that abrogation of Eleventh Amendment immunity was necessary. *See id.*

B. The FLSA Materials Cited By Respondents Cannot Support Abrogation

The FLSA was amended to extend to the States in 1974. *See Varner*, 226 F.3d at 932 n.3. Respondents identify in their briefs certain statements made during FLSA hearings that were held in 1970, 1971 and 1973. *See* S.G. Br. at 21-24. Respondents suggest that these statements were part of the "legislation that ultimately extended the Equal Pay Act" to the States, and they further suggest that these statements somehow support abrogation. *See id.* at 21.

This characterization is more than a little misleading. All but one of the statements identified by Respondents were made in connection with the 1972 amendments to the FLSA, which extended the Equal Pay Act to women holding executive, administrative and professional positions, and these amendments are entirely distinct from the 1974 amendments to the FLSA. *See* Pub. L. No. 92-318, 86 Stat. 375. As a result, these statements simply have nothing to do with the extension of the Equal Pay Act to the States.

None of these earlier statements, including the single statement Respondents identify from 1973, were mentioned (much less adopted) in the House and Senate reports that accompanied the subsequent extension of the FLSA to the States, nor were they incorporated in any of the other legislative findings by Congress. *See* H.R. Rep. No. 93-913 (1974) at *passim*, *reprinted in* 1974 U.S.C.C.A.N. 2811-62; S. Rep. No. 93-690 (1974) at *passim*. To the contrary, when Congress issued the legislative findings for the 1974 extension of the FLSA to the States (which included the Equal Pay Act), it omitted any mention whatsoever of gender discrimination. *See id.*

Moreover, the scattered comments (which were not made in connection with the 1974 amendments extending the FLSA to the States) amount to nothing more than the "unexamined anecdotal" accounts that this Court has repeatedly indicated "fall far short of even suggesting the pattern of unconstitutional discrimination on which § 5 legislation must be based." *See Garrett*, 121 S. Ct. at 965-66;

see also, Kimel, 528 U.S. at 89-91. Congress failed to ratify these sorts of isolated and "unexamined" statements in its legislative findings. This failure, in turn, constitutes "strong evidence" that in the judgment of Congress, "no pattern of unconstitutional state action ha[s] been documented." *See Garrett*, 121 S. Ct. at 966.

C. The Materials Cited By Respondents From Other Sources Cannot Support Abrogation

Respondents repeatedly reference material that is wholly unrelated to either the FLSA or the Equal Pay Act. *See* S.G. Br. at 11-20. These materials cannot possibly support abrogation for two independent reasons.

1. There Is No Precedent For Relying Upon Extraneous Materials To Support Abrogation

Throughout their briefs, Respondents devote an enormous amount of attention to materials gathered from the legislative histories of statutes other than the Equal Pay Act. *See* S.G. Br. at 7-20; Pltffs' Br. at 17-20. The suggestion, however, that these extraneous materials are somehow relevant to the issue now before the Court is belied by this Court's own precedents.

In each of its recent decisions on abrogation, this Court has faithfully examined the legislative history for the statute then under consideration. *See, e.g., Garrett*, 121 S. Ct. at 966-67. In so doing, this Court has carefully examined the *findings* that accompanied the legislation to determine if they justified abrogation.[1] *See id.* In no instance, however, has this Court suggested that courts can or should look outside the legislative history of the statute in question in order to determine if abrogation

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[1] This Court has not hesitated to critically examine the findings of Congress to determine if they are sufficient. *See Florida Prepaid v. College Savings Bank*, 527 U.S. 627, 644 (1999).

under that statute was or is warranted. Nor would such an inquiry comport with the strict guidelines established by this Court in the abrogation context. *See, e.g., id.* at 967-68.

Because there is no Eleventh Amendment precedent for examining materials that are unrelated to the legislation in question, Respondents turn instead to cases arising in other constitutional contexts. *See, e.g.,* Pltffs' Br. at 20. The power of Congress to abrogate the Eleventh Amendment, however, must be construed no more broadly than is necessary to protect the constitutional rights of State employees. *See College Savings Bank v. Florida Prepaid,* 527 U.S. 666, 675 (1999); *cf. Dellmuth,* 491 U.S. at 227-28. Indeed, even the line of cases recited by Respondents confirms that when a statute "breaks" with existing law, Congress must compile legislative findings within the legislative record of the statute in question in order to support its action. *See United States v. Lopez,* 514 U.S. 549, 563 (1995). Abrogation of the Eleventh Amendment necessarily constitutes just such a "break." *See Seminole Tribe v. Florida,* 517 U.S. 44, 54-56 (1996); *cf. Dellmuth,* 491 U.S. at 227; *see also, Garrett,* 121 S. Ct. at 967.

2. None Of The Materials Relied Upon By Respondents Even Purport To Address The Two Critical Issues Here

The legislative materials relied upon by Respondents do not even address the two questions that are critical here, namely, whether Congress actually needed to impose extra-constitutional measures upon the States *and* whether there was truly a need for federal forums to hear cases such as this. Absent evidence to support the necessity of both, application of the Equal Pay Act to the States can hardly be considered "genuinely necessary to prevent violation of the Fourteenth Amendment." *See, e.g., College Savings Bank,* 527 U.S. at 675.

Notably, the briefs submitted by Respondents appear to contain only a single footnote relating to the need for federal jurisdiction. *See* S.G. Br. at n.7. This footnote does

not identify any congressional findings on the issue. *See id.* Instead, it merely recites a handful of isolated and conclusory statements that were made in other legislative contexts. *See id.* These statements, moreover, "are so general and brief that no firm conclusion can be drawn." *See Garrett*, 121 S. Ct. at 966 n.7. Indeed, they all predate the extension of Title VII to the States, a legislative enactment that made the federal courts readily available to all State employees who believed they had been subjected to intentional discrimination. *See id.*

Likewise, the materials relied upon by Respondents do not suggest any need to rewrite the constitutional definition of "discrimination" in order to enforce the constitutional rights of State employees. As this Court has repeatedly stated, only intentional discrimination violates the Constitution, but as acknowledged by the court of appeals and by Respondents, the Equal Pay Act "prohibit[s] some conduct that is constitutional" and imposes monetary liability upon the States for disparate impacts that are not the result of intentional discrimination. *See, e.g., Varner*, 226 F.3d at 932. But if the analysis required by this Court's precedents means anything, it must mean that Congress cannot substitute its own more expansive standard of discrimination for that of the Constitution, absent credible evidence that the substitution is necessary. *See Garrett*, 121 S. Ct. at 966-67; *College Savings Bank*, 527 U.S. at 675.

There is no such evidence here. Quite to the contrary, the States had already been subject to Title VII for two years by the time the Equal Pay Act was extended to them, and there is no evidence that Title VII was and is not fully capable of addressing constitutional violations by the States. Therefore, in light of the existence of Title VII, Respondents remain unable to explain how the extension of the Equal Pay Act to the States was in any sense "necessary." *See College Savings Bank*, 527 U.S. at 675.

III. *GARRETT* REFUTES ANY SUGGESTION THAT EXISTING REMEDIES ARE IRRELEVANT

In an attempt to distinguish this Court's examination of state remedies in *Florida Prepaid*, Respondents suggest that the availability of such remedies in the due process context is somehow different than in the equal protection context. *See* S.G. Br. at 26-27. This argument fails for several reasons.

As an initial matter, *Florida Prepaid* is not the only decision of this Court to recognize the importance of examining other remedies, including remedies provided by the States. In *Garrett*, for instance, this Court expressly noted the existence of such remedies in considering the propriety of abrogation. *See Garrett*, 121 S. Ct. at 964 n.5. Likewise, this Court has long considered the availability of existing remedies in determining the extra-constitutional obligations imposed upon the States under Section 5. *See, e.g., State of South Carolina v. Katzenbach*, 383 U.S. 301, 313-15 (1966) ("Congress had found that case-by-case litigation was inadequate to combat widespread and persistent discrimination in voting. . . . "). Indeed, the ultimate issue must always be whether abrogation is necessary to safeguard the Constitution. *See id.; see also, College Savings Bank*, 527 U.S. at 675. The adequacy of state remedies is obviously relevant to this ultimate question in both the due process and equal protection contexts.[2] *See id.; see also, Garrett*, 121 S. Ct. at 964 n.5.

IV. *GARRETT* REFUTES ANY SUGGESTION THAT THE STANDARD OF SCRUTINY SOMEHOW OBVIATES THE NEED FOR THE ANALYSIS REQUIRED BY *KATZENBACH* AND *BOERNE*

Respondents further contend that because "decisions based on gender are presumptively invalid, . . . Congress is

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[2] Examining the existence and effectiveness of state remedies is also critical in determining the geographic and temporal scope of abrogation. *See Katzenbach*, 383 U.S. at 329-32; *Kimel*, 528 U.S. at 90; *see also, City of Boerne v. Flores*, 521 U.S. 507, 533 (1997).

not required to make legislative findings that are as extensive as in the age and disability areas." Pltffs' Br. at 18. The fact, however, that gender is entitled to heightened constitutional protection does not change the standard necessary to support abrogation or any other legislation under Section 5. *See, e.g., Boerne*, 521 U.S. at 529-30; *Garrett*, 121 S. Ct. at 967. In fact, this Court has already rejected any suggestion that different standards should apply when suspect legislative classifications are at issue. *See id.*

Both the court of appeals and Respondents conflate the "unexplained differences" standard in the Equal Pay Act with the Constitution's "exceedingly persuasive justification" standard. *See Varner*, 226 F.3d at 934-35; Pltffs' Br. at 13. The Equal Pay Act, however, goes beyond the Constitution and imposes liability for any "unexplained differences," without regard to whether those differences were the result of intentional discrimination. *See, e.g., Fallon v. State of Illinois*, 882 F.2d 1206, 1213 (7th Cir. 1989). Accordingly, the Equal Pay Act must be analyzed under the exacting standards of *Katzenbach* and *Boerne* precisely because (as the court of appeals acknowledged) the Equal Pay Act purports to impose liability upon the States for acts and omissions that fall short of the constitutional standard, namely intentional discrimination. *See Garrett*, 121 S. Ct. at 967.

The mere fact that gender is subject to higher scrutiny obviously does not eliminate the need for the analysis required by *Katzenbach* and *Boerne* (both cases involving legislative classification subject to strict scrutiny). As reaffirmed by *Garrett*, the line between intentional discrimination and disparate impact must be maintained even in the context of legal classifications that receive the strictest scrutiny. *See Garrett*, 121 S. Ct. at 967. That line, however, is the very line that the Equal Pay Act purports to erase.[3]

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[3] Respondents argue that certiorari is inappropriate because the "business necessity" standard supposedly does not apply in the Seventh Circuit. *See* S.G. Br. at 25 n.24. In light of the fact that the Seventh Circuit has admitted that the "effect of the

V. CONCLUSION

Respondents suggest that this Court need not decide this issue now but should instead bide its time until more of the circuit courts have analyzed the issue. *See* S.G. Br. at 29-30. This outcome would be particularly inappropriate in this case. Not only does the State of Illinois deserve to have its rights vindicated by this Court, but the Seventh Circuit's decision to accept new briefing in a related case in light of *Garrett* suggests that it has already recognized the potential conflict between *Garrett* and its own decision in this case. If this Court determines it would benefit from further analysis by the circuit courts (as the Respondents suggest), then this case should be remanded to the Seventh Circuit for further consideration in light of *Garrett*. Alternatively, ISU's petition should be granted so that full review can be provided by this Court.

Respectfully submitted,

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Dated: May 18, 2001

Counsel for Petitioners,
Illinois State University,
et al.

Equal Pay Act's burden shifting scheme is to prohibit some conduct that is constitutional," this is little more than a red herring. *See Varner*, 226 F.3d at 933. It is certainly ironic, however, that the government would argue that the grant of certiorari is inappropriate here because a longstanding conflict exists between the circuit courts as to how much constitutional conduct the Equal Pay Act actually punishes. *See* S.G. Br. at 25 n.4.

KELLY CHERRY Plaintiff-Appellee	G. Houston Parrish 608/271-9999 Suite 200 [COR LD NTC ret] 6417 Normandy Lane Madison, WI 53719
v.	Richard Briles Moriarty 608/267-2796
UNIVERSITY OF WISCONSIN SYSTEM BOARD OF REGENTS Defendant-Appellant	[COR LD NTC ret] OFFICE OF THE ATTORNEY GENERAL Wisconsin Department of Justice 123 W. Washington Avenue P.O. Box 7857 Madison, WI 53707-7857 USA

6/5/00	Private civil case docketed. [00-2435] [1296056-1] Transcript information sheet due 6/15/00. Fee or IFP forms due on 6/19/00 for Univ WI System. Docketing Statement due 6/9/00. (patb) [00-2435]
6/12/00	Filed Appellant Univ WI System in 00-2435 docketing statement. [00-2435] [1297986-1] (eric) [00-2435]
6/16/00	Filed notice from the District Court that the appeal docketing fee was receiving. [00-2435] [1296056-1] (terr) [00-2435]
6/28/00	Filed motion by appellant Univ WI System for stay pending appeal. [1312078-1] [00-2435] (hard) [00-2435]

6/30/00	Filed district court order dated June 20, 2000; Denying defendant's motion to stay this matter pending the resolution of its interlocutory appeal. Forwarded to Staff Attorney [00-2435] [1296068-1] (scze) [00-2435]
7/6/00	ORDER: Filed clerk's notice to Appellee Kelly Cherry to file a response to MOTION TO STAY PROCEEDINGS PENDING APPEAL. [1296068-1] JKL [00-2435] Response due 7/14/00 for Kelly Cherry. (hard) [00-2435]
7/10/00	Filed motion by Appellant Univ WI System to extend time to file appellant's brief. [1305617-1] [00-2435] (squi) [00-2435]
7/11/00	ORDER issued DENYING as unnecessary motion for extension of time to file appellant's brief. The court, on its own motion, orders that briefing in this appeal is SUSPENDED, pending resolution of the motion to stay proceedings. [1305617-1] [1306149-1] CMD [00-2435] (hard) [00-2435]
7/14/00	Filed Appellant Univ WI System reply brief supporting motion to stay proceedings pending appeal. [1307568-1] [00-2435] [1307568-1] (hard) [00-2435]
7/14/00	Filed Appellee Kelly Cherry opposition to Appellant Univ WI System motion to stay proceedings pending appeal. [1307577-1] [00-2435] [1307577-1] (hard) [00-2435]
7/14/00	Filed Appellee Kelly Cherry Brief In Support of MOTION TO COMPEL DISCOVERY. [00-2435] [1296068-1] (hard) [00-2435]

7/17/00	Filed motion by Appellant Univ WI System to file reply brief supporting motion to stay proceedings pending appeal. [1308043-1] [00-2435] (hard) [00-2435]
7/17/00	Disclosure Statement filed by Appellee Kelly Cherry. [00-2435] [1296068-1] (hard) [00-2435]
7/18/00	Disclosure Statement filed by Appellee Kelly Cherry [00-2435] [1296068-1] (hard) [00-2435]
7/18/00	Disclosure Statement filed for Appellee Kelly Cherry by attorney Robert J. Gingras. [00-2435] [1296068-1] (hard) [00-2435]
7/24/00	Filed motion by Appellant Univ WI System to file supplement to short record supporting motion to stay proceedings pending appeal. [1310236-1] 3c supplement to short record tendered. [0-0] [00-2435] (hard) [00-2435]
7/25/00	ORDER re: 1) Motion to stay proceedings pending appeal. 2) Brief supporting motion to stay proceedings pending appeal. 3) Plaintiff's opposition to defendant's motion to stay proceedings pending appeal. 4) Reply brief supporting motion to stay proceedings pending appeal. The motion to stay district court proceedings pending appeal is GRANTED, [1312078-1] JKL and all proceedings in the district court are STAYED pending resolution of this appeal. [00-2435] (hard) [00-2435]

7/25/00	ORDER issued GRANTING motion to file supplement and [1310236-1] GRANTING motion to file reply. [1308043-1] The clerk of this court shall file INSTANTER the tendered copies of the appellant's reply and appellant's supplement. [1296068-1] JKL [00-2435] (squi) [00-2435]
8/10/00	ORDER: Briefing will proceed as follows: [1296068-1] CMD [00-2435] Appellant's brief due 9/8/00 for Univ WI System. Appellee's brief due 10/10/00 for Kelly Cherry. Appellant's reply brief due 10/24/00 for Univ WI System. (squi) [00-2435]
8/30/00	Filed oversized record in Section # 24 of exhibit room: 1 box containing supplement to short record. [1296068-1] [00-2435] (cove) [00-2435]
9/8/00	Brief deficiency letter sent to Appellant Univ WI System. [1296068-1] [00-2435] (odea) [00-2435]
9/8/00	Filed 15c appellant's brief by Univ WI System. Disk filed. [00-2435] [1326027-1] (squi) [00-2435]
9/8/00	Filed 10c appendix by Appellant Univ WI System. [00-2435] [1326028-1] (squi) [00-2435]
9/15/00	Filed oversized record in Section # 24 of exhibit room: 1 box containing briefs & appendixes. [1296068-1] [00-2435] (stef) [00-2435]
10/4/00	NOTICE: Richard Briles Moriarty for Appellant Univ WI System will not be available for oral argument SEE LETTER. [00-2435] [1296068-1] (broo) [00-2435]

10/10/00 Filed 15c appellee's brief by Kelly Cherry. Disk filed. [00-2435] [1333095-1] (squi) [00-2435]

10/24/00 Filed 15c appellant's reply brief by Univ WI System. Disk filed. [00-2435] [1337577-1] (kell) [00-2435]

10/26/00 NOTICE: Richard Briles Moriarty for Appellant Univ WI System will not be available for oral argument November 2, 3, 7, 8, 9, 13, 14, 15, 16, 20-24, 30, December 1, 4-8, 19-22, 25-29, 2000, January 1-5, 8-12, 15-17, February, 7, March 12-16, 26-30, 2001. [00-2435] [1296068-1 (broo) [00-2435]

11/14/00 NOTICE: G. Houston Parrish for Appellee Kelly Cherry will not be available for oral argument November 13, 14, 22-24, 27, December 20-29, 2000, January 1, 8-12, 15-17, February 1, 7, March 12-16, 26-30, April 12, 13, 2001. [00-2435] [1296068-1] (broo) [00-2435]

11/30/00 ORDER: Argument set for Thursday, January 18, 2001 at 9:30 a.m. in the ceremonial courtroom. Each side limited to 20 minutes. [00-2435] [1349437-1] (broo) [00-2435]

12/11/00 Filed oversized record in Section # 24 of exhibit room: 1 box containing briefs. [1296068-1] [00-2435] (cove) [00-2435]

12/12/00 Original record on appeal filed. Contents of record: 1 vol. pleadings; 1 vol. transcripts; 7 vol. loose pleadings; [00-2435] [1353097-1] (stef) [00-2435]

12/12/00	Filed oversized record in Section # 24 of exhibit room: 1 box containing 1 vol. pleadings; 7 vol. loose pleadings; [1296068-1] [00-2435] (cove) [00-2435]
12/22/00	Filed Appellant Univ WI System Citation of Additional Authority, per CR 28(e). Dist. [00-2435] [1357044-1] (mixa) [00-2435]
1/18/01	Case heard and taken under advisement by panel: Circuit Judge William J. Bauer, Circuit Judge Daniel A. Manion, Circuit Judge Diane P. Wood. [00-2435] [1364992-1] (broo) [00-2435]
1/18/01	Case argued by Richard Briles Moriarty for Appellant Univ WI System, G. Houston Parrish for Appellee Kelly Cherry. [00-2435] [1296068-1] (broo) [00-2435]
1/29/01	Filed letter from Richard Briles Moriarty for Appellant Univ WI System re: The court's further guidance on whether it seeks supplemental briefing on these jurisdictional questions. Dist. [1296068-1] [00-2435] (hard) [00-2435]
2/23/01	Filed motion by Appellant Univ WI System to supplement brief. [1374730-1] [00-2435] (mixa) [00-2435]
2/27/01	Filed Appellant Univ WI System Citation of Additional Authority, per CR 28(e). Dist. [00-2435] [1375728-1] (mixa) [00-2435]

3/21/01	ORDER: The court GRANTS appellant's motion to supplement brief and orders the parties to file simultaneous memoranda of no more than 15 pages addressing the issue of whether Wisconsin's immunity bars the appellee's EPA claim in light of Board of Trustees of the University of Alabama v. Arrett, by Friday 4/6/01. The court denies appellant's additional request for further briefing on other jurisdictional concerns. [1374730-1] [00-2435] (hard) [00-2435]
3/26/01	ORDER: Amending order of 3/21/01 to read . . . Alabama v. Garrett not . . . Alabama v. Arrett.[1296068-1] [00-2435] (hard) [00-2435]
3/29/01	Filed motion by Appellee Kelly Cherry to extend time to file memorandum. [1385300-1] [00-2435] (mixa) [00-2435]
3/30/01	ORDER issued GRANTING motion to extend time to file memorandum only to the extent that the parties shall file simultaneous memoranda no later than 4/13/01. [1385300-1] JKL [00-2435] (hard) [00-2435]
4/6/01	Filed Appellant Univ WI System memorandum of defendant-appellant regarding effect of Board of Trustees of University of Alabama v. Garrett, 121 S. Ct. 955 (2001) on the immunity defense against the equal pay claim. [00-2435] [1296068-1] (mixa) [00-2435]
4/13/01	Filed Appellee Kelly Cherry supplemental memorandum addressing whether state immunity bars plaintiff-appellee's EPA claim in light of Board of Trustees of the University of Alabama v. Garrett, 121 S.CT. 955 (2001). Dist. [00-2435] [1390200-1] (mixa) [00-2435]